

Senate Engrossed

**FILED**

**KEN BENNETT**

**SECRETARY OF STATE**

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

CHAPTER 67

# **SENATE BILL 1266**

AN ACT

AMENDING SECTIONS 23-901.08 AND 23-1021, ARIZONA REVISED STATUTES; RELATING  
TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-901.08, Arizona Revised Statutes, is amended to  
3 read:

4 23-901.08. Professional employer organizations

5 A. A person engaged in the business of providing professional employer  
6 services is subject to this chapter regardless of whether the person uses the  
7 term professional employer organization, PEO, staff leasing company,  
8 registered staff leasing company, employee leasing company or any other name.

9 B. As long as the professional employer organization's professional  
10 employer agreement with a client remains in force, the professional employer  
11 organization shall be regarded as a co-employer of the employee.

12 C. The professional employer organization and its client shall be  
13 considered the employer for the purpose of coverage under this chapter and  
14 both the professional employer organization and its client shall be entitled  
15 to protection of the exclusive remedy set forth in section 23-1022. Both the  
16 professional employer organization and its client shall comply with the  
17 ~~provisions of sections 23-906 and 23-964. The requirements of section~~  
18 ~~23-1021, subsection F shall be satisfied if either the professional employer~~  
19 ~~organization or its client files the required written certification with the~~  
20 ~~commission.~~

21 D. When a professional employer organization enters into a  
22 professional employer agreement with a client in Arizona THIS STATE, the  
23 professional employer organization shall notify its workers' compensation  
24 insurance carrier and the commission. The notification shall be on a form  
25 approved by the commission and shall include the following information:

26 1. The name and business address of the client employer.

27 2. Whether all or a majority of the client employer's workforce is  
28 covered by the professional employer agreement.

29 3. Unless all of the client employer's workforce is covered by the  
30 professional employer agreement, the name of the client employer's workers'  
31 compensation insurance carrier that is insuring the client employer's  
32 obligation to secure compensation under section 23-961 for any employees who  
33 are not covered by the professional employer agreement. The professional  
34 employer organization shall also notify each client, in writing, of the  
35 client's obligation under section 23-961 to secure workers' compensation for  
36 any employees who are not covered by the professional employer agreement,  
37 even if such employees are hired after the execution of the professional  
38 employer agreement.

39 E. If a professional employer agreement is terminated, the  
40 professional employer organization shall immediately notify its workers'  
41 compensation insurance carrier and the commission, in writing, of the name of  
42 the client and the date of termination of the agreement.

1       Sec. 2. Section 23-1021, Arizona Revised Statutes, is amended to read:  
2       23-1021. Right of employee to compensation

3       A. Every employee coming within the provisions of this chapter who is  
4       injured, and the dependents of every such employee who is killed by accident  
5       arising out of and in the course of his employment, wherever the injury  
6       occurred, unless the injury was purposely self-inflicted, shall be entitled  
7       to receive and shall be paid such compensation for loss sustained on account  
8       of the injury or death, such medical, nurse and hospital services and  
9       medicines, and such amount of funeral expenses in the event of death, as are  
10      provided by this chapter.

11      B. Every employee who is covered by insurance in the state  
12      compensation fund and who is injured by accident arising out of and in the  
13      course of employment, and the dependents of every such employee who is  
14      killed, provided the injury was not purposely self-inflicted, shall be paid  
15      such compensation from the state compensation fund for loss sustained on  
16      account of the injury and shall receive such medical, nurse and hospital  
17      services and medicines, and such amount of funeral expenses in event of  
18      death, as provided in this chapter.

19      ~~C. An employee's injury or death shall not be considered a personal~~  
20      ~~injury by accident arising out of and in the course of employment and is not~~  
21      ~~compensable pursuant to this chapter if the impairment of the employee is due~~  
22      ~~to the employee's use of alcohol or the unlawful use of any controlled~~  
23      ~~substance proscribed by title 13, chapter 34 and is a substantial~~  
24      ~~contributing cause of the employee's personal injury or death. This~~  
25      ~~subsection does not apply if the employer had actual knowledge of and~~  
26      ~~permitted, or condoned, the employee's use of alcohol or the unlawful use of~~  
27      ~~the controlled substance proscribed by title 13, chapter 34.~~

28      ~~D. Notwithstanding subsection C of this section, if the employer has~~  
29      ~~established a policy of drug testing or alcohol impairment testing in~~  
30      ~~accordance with chapter 2, article 14 of this title, is maintaining that~~  
31      ~~policy on an ongoing manner and, before the date of the employee's injury,~~  
32      ~~the employer files the written certification with the industrial commission~~  
33      ~~as required by subsection F of this section, an employee's injury or death~~  
34      ~~shall not be considered a personal injury by accident arising out of and in~~  
35      ~~the course of employment and is not compensable pursuant to this chapter, if~~  
36      ~~the employee of such an employer fails to pass, refuses to cooperate with or~~  
37      ~~refuses to take a drug test for the unlawful use of any controlled substance~~  
38      ~~proscribed by title 13, chapter 34 or fails to pass, refuses to cooperate~~  
39      ~~with or refuses to take an alcohol impairment test that is administered by or~~  
40      ~~at the request of the employer not more than twenty four hours after the~~  
41      ~~employer receives actual notice of the injury, unless the employee proves any~~  
42      ~~of the following:~~

43      ~~1. The employee's use of alcohol or the employee's use of any unlawful~~  
44      ~~substance proscribed by title 13, chapter 34 was not a contributing cause of~~  
45      ~~the employee's injury or death.~~

1       2. ~~The alcohol impairment test indicates that the employee's alcohol~~  
2 ~~concentration was lower than the alcohol concentration that would constitute~~  
3 ~~a violation of section 28-1381, subsection A and would not create a~~  
4 ~~presumption that the employee was under the influence of intoxicating liquor~~  
5 ~~pursuant to section 28-1381, subsection G.~~

6       3. ~~The drug test or alcohol impairment test used cutoff levels for the~~  
7 ~~presence of alcohol, drugs or metabolites that were lower than the cutoff~~  
8 ~~levels prescribed at the time of the testing for transportation workplace~~  
9 ~~drug and alcohol testing programs under 49 Code of Federal Regulations~~  
10 ~~part 40.~~

11       E. ~~Subsection D of this section does not apply if the employer had~~  
12 ~~actual knowledge of and permitted or condoned the employee's use of alcohol~~  
13 ~~or the employee's unlawful use of any controlled substance proscribed by~~  
14 ~~title 13, chapter 34.~~

15       F. ~~An employer that establishes a policy of drug testing or alcohol~~  
16 ~~impairment testing in accordance with chapter 2, article 14 of this title~~  
17 ~~shall file a written certification to that effect with the industrial~~  
18 ~~commission and provide notification to its employees in a manner consistent~~  
19 ~~with section 23-493.04, subsection A that the employer is maintaining that~~  
20 ~~policy.~~

21       G. ~~Nothing contained in this section shall be construed to enhance or~~  
22 ~~expand the reporting requirements prescribed in section 23-908, subsection E.~~

23       H. ~~For the purposes of this section:~~

24       1. ~~"Refuses to cooperate" means that the employee engages in any act~~  
25 ~~or omission that impedes the ability of the employer, the insurance carrier~~  
26 ~~or the agents of the employer or insurance carrier to obtain an accurate~~  
27 ~~result on a drug test or an alcohol impairment test.~~

28       2. ~~"Substantial contributing cause" means anything more than a slight~~  
29 ~~contributing cause.~~

~~APPROVED BY THE GOVERNOR JULY 10, 2009.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 10, 2009.~~